

SECOND REGULAR SESSION  
[ P E R F E C T E D ]  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 685**  
95TH GENERAL ASSEMBLY

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Reported from the Committee on Small Business, Insurance and Industry, February 25, 2010, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bill No. 685, adopted March 3, 2010.

Taken up for Perfection March 3, 2010. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

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**AN ACT**

To repeal section 375.1255, RSMo, and to enact in lieu thereof two new sections relating to the financial condition of certain insurance companies.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 375.1255, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 375.539 and 375.1255, to read as follows:

**375.539. 1. The director of the department of insurance, financial institutions and professional registration may deem an insurance company to be in such financial condition that its further transaction of business would be hazardous to policyholders, creditors, and the public, if such company is a property or casualty insurer, or both a property and casualty insurer, which has in force any policy with any single net retained risk larger than ten percent of that company's capital and surplus as of the December thirty-first next preceding.**

**2. The following standards, either singly or a combination of two or more, may be considered by the director to determine whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous to its policyholders, creditors, or the general public:**

**(1) Adverse findings reported in financial condition and market**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

15 **conduct examination reports, audit reports, and actuarial opinions,**  
16 **reports, or summaries;**

17 **(2) The National Association of Insurance Commissioners**  
18 **Insurance Regulatory Information System and its other financial**  
19 **analysis solvency tools and reports;**

20 **(3) Whether the insurer has made adequate provision, according**  
21 **to presently accepted actuarial standards of practice, for the**  
22 **anticipated cash flows required by the contractual obligations and**  
23 **related expenses of the insurer, when considered in light of the assets**  
24 **held by the insurer with respect to such reserves and related actuarial**  
25 **items including, but not limited to, the investment earnings on such**  
26 **assets, and the considerations anticipated to be received and retained**  
27 **under such policies and contracts;**

28 **(4) The ability of an assuming reinsurer to perform and whether**  
29 **the insurer's reinsurance program provides sufficient protection for the**  
30 **insurer's remaining surplus after taking into account the insurer's cash**  
31 **flow and the classes of business written as well as the financial**  
32 **condition of the assuming reinsurer;**

33 **(5) Whether the insurer's operating loss in the last twelve-month**  
34 **period or any shorter period of time, including but not limited to net**  
35 **capital gain or loss, change in non-admitted assets, and cash dividends**  
36 **paid to shareholders, is greater than fifty percent of the insurer's**  
37 **remaining surplus as regards to policyholders in excess of the minimum**  
38 **required;**

39 **(6) Whether the insurer's operating loss in the last twelve-month**  
40 **period or any shorter period of time, excluding net capital gains, is**  
41 **greater than twenty percent of the insurer's remaining surplus as**  
42 **regards to policyholders in excess of the minimum required;**

43 **(7) Whether a reinsurer, obligor, or any entity within the**  
44 **insurer's insurance holding company system, is insolvent, threatened**  
45 **with insolvency or delinquent in payment of its monetary or other**  
46 **obligations, and which in the opinion of the director may affect the**  
47 **solvency of the insurer;**

48 **(8) Contingent liabilities, pledges, or guaranties which either**  
49 **individually or collectively involve a total amount which in the opinion**  
50 **of the director may affect the solvency of the insurer;**

51 **(9) Whether any "controlling" person of an insurer is delinquent**

52 in the transmitting to, or payment of, net premiums to the insurer. As  
53 used in this subdivision, the term "controlling" shall have the same  
54 meaning assigned to it in subdivision (2) of section 382.010;

55 (10) The age and collectibility of receivables;

56 (11) Whether the management of an insurer, including officers,  
57 directors, or any other person who directly or indirectly controls the  
58 operation of the insurer, fails to possess and demonstrate the  
59 competence, fitness, and reputation deemed necessary to serve the  
60 insurer in such position;

61 (12) Whether management of an insurer has failed to respond to  
62 inquiries relative to the condition of the insurer or has furnished false  
63 and misleading information concerning an inquiry;

64 (13) Whether the insurer has failed to meet financial and holding  
65 company filing requirements in the absence of a reason satisfactory to  
66 the director;

67 (14) Whether management of an insurer either has filed any false  
68 or misleading sworn financial statement, or has released false or  
69 misleading financial statement to lending institutions or to the general  
70 public, or has made a false or misleading entry, or has omitted an entry  
71 of material amount in the books of the insurer;

72 (15) Whether the insurer has grown so rapidly and to such an  
73 extent that it lacks adequate financial and administrative capacity to  
74 meet its obligations in a timely manner;

75 (16) Whether the insurer has experienced or will experience in  
76 the foreseeable future cash flow or liquidity problems;

77 (17) Whether management has established reserves that do not  
78 comply with minimum standards established by state insurance laws,  
79 regulations, statutory accounting standards, sound actuarial principles  
80 and standards of practice;

81 (18) Whether management persistently engages in material under  
82 reserving that results in adverse development;

83 (19) Whether transactions among affiliates, subsidiaries, or  
84 controlling persons for which the insurer receives assets or capital  
85 gains, or both, do not provide sufficient value, liquidity, or diversity to  
86 assure the insurer's ability to meet its outstanding obligations as they  
87 mature;

88 (20) Any other finding determined by the director to be

89 **hazardous to the insurer's policyholders, creditors, or general public.**

90 **3. For the purposes of making a determination of an insurer's**  
91 **financial condition under this section, the director may:**

92 **(1) Disregard any credit or amount receivable resulting from**  
93 **transactions with a reinsurer that is insolvent, impaired, or otherwise**  
94 **subject to a delinquency proceeding;**

95 **(2) Make appropriate adjustments including disallowance to**  
96 **asset values attributable to investments in or transactions with parents,**  
97 **subsidiaries, or affiliates consistent with the National Association of**  
98 **Insurance Commissioners Accounting Policies and Procedures Manual,**  
99 **state laws and regulations;**

100 **(3) Refuse to recognize the stated value of accounts receivable**  
101 **if the ability to collect receivables is highly speculative in view of the**  
102 **age of the account or the financial condition of the debtor;**

103 **(4) Increase the insurer's liability in an amount equal to any**  
104 **contingent liability, pledge, or guarantee not otherwise included if**  
105 **there is a substantial risk that the insurer will be called upon to meet**  
106 **the obligation undertaken within the next twelve-month period.**

107 **4. If the director determines that the continued operation of the**  
108 **insurer licensed to transact business in this state may be hazardous to**  
109 **its policyholders, creditors, or the general public, then the director**  
110 **may, to the extent authorized by law and in accordance with any**  
111 **procedures required by law, issue an order requiring the insurer to:**

112 **(1) Reduce the total amount of present and potential liability for**  
113 **policy benefits by reinsurance;**

114 **(2) Reduce, suspend, or limit the volume of business being**  
115 **accepted or renewed;**

116 **(3) Reduce general insurance and commission expenses by**  
117 **specified methods;**

118 **(4) Increase the insurer's capital and surplus;**

119 **(5) Suspend or limit the declaration and payment of dividend by**  
120 **an insurer to its stockholders or to its policyholders;**

121 **(6) File reports in a form acceptable to the director concerning**  
122 **the market value of an insurer's assets;**

123 **(7) Limit or withdraw from certain investments or discontinue**  
124 **certain investment practices to the extent the director deems**  
125 **necessary;**

126           **(8) Document the adequacy of premium rates in relation to the**  
127 **risks insured;**

128           **(9) File, in addition to regular annual statements, interim**  
129 **financial reports on the form adopted by the National Association of**  
130 **Insurance Commissioners or in such format as promulgated by the**  
131 **director;**

132           **(10) Correct corporate governance practice deficiencies, and**  
133 **adopt and utilize governance practices acceptable to the director;**

134           **(11) Provide a business plan to the director in order to continue**  
135 **to transact business in the state;**

136           **(12) Notwithstanding any other provision of law limiting the**  
137 **frequency or amount of premium rate adjustments, adjust rates for any**  
138 **non-life insurance product written by the insurer that the director**  
139 **considers necessary to improve the financial condition of the insurer.**

140           **5. An insurer subject to an order under subsection 4 of this**  
141 **section may request a hearing before the director in accordance with**  
142 **the provisions of chapter 536. The notice of hearing shall be served**  
143 **upon the insurer pursuant to section 536.067. The notice of hearing**  
144 **shall state the time and place of hearing and the conduct, condition, or**  
145 **ground upon which the director based the order. Unless mutually**  
146 **agreed between the director and the insurer, the hearing shall occur**  
147 **not less than ten days nor more than thirty days after notice is served**  
148 **and shall be either in Cole County or in some other place convenient**  
149 **to the parties designated by the director. The director shall hold all**  
150 **hearings under this subsection privately, unless the insurer requests**  
151 **a public hearing, in which case the hearing shall be public.**

152           **6. This section shall not be interpreted to limit the powers**  
153 **granted the director by any laws or parts of laws of this state, nor shall**  
154 **this section be interpreted to supercede any laws or parts of laws of**  
155 **this state, except that if the insurer is a foreign insurer, the director's**  
156 **order under subsection 4 of this section may be limited to the extent**  
157 **expressly provided by any laws or parts of laws of this state.**

          375.1255. 1. "Company action level event" means with respect to any  
2 insurer, any of the following events:

3           (1) The filing of an RBC report by the insurer which indicates that:

4           (a) The insurer's total adjusted capital is greater than or equal to its  
5 regulatory action level RBC but less than its company action level RBC; or

6 (b) If a life and health insurer, the insurer has total adjusted capital  
7 which is greater than or equal to its company action level RBC but less than the  
8 product of its authorized control level capital and 2.5, and has a negative trend;

9 **(c) If a property and casualty insurer, the insurer has total**  
10 **adjusted capital which is greater than or equal to its Company Action**  
11 **Level RBC but less than the product of its Authorized Control Level**  
12 **RBC and 3.0 and triggers the trend test determined in accordance with**  
13 **the trend test calculation included in the Property and Casualty RBC**  
14 **report instructions;**

15 (2) The notification by the director to the insurer of an adjusted RBC  
16 report that indicates the event in paragraph (a) [or], (b), or (c) of subdivision (1)  
17 of this subsection, if the insurer does not challenge the adjusted RBC report  
18 pursuant to section 375.1265;

19 (3) If pursuant to section 375.1265 the insurer challenges an adjusted  
20 RBC report that indicates the event described in subdivision (1) of this  
21 subsection, the notification by the director to the insurer that the director has,  
22 after a hearing, rejected the insurer's challenge.

23 2. In the event of a company action level event the insurer shall prepare  
24 and submit to the director an RBC plan which shall:

25 (1) Identify the conditions in the insurer which contribute to the company  
26 action level event;

27 (2) Contain proposals of corrective actions which the insurer intends to  
28 take and would be expected to result in the elimination of the company action  
29 level event;

30 (3) Provide projections of the insurer's financial results in the current  
31 year and at least the four succeeding years, both in the absence of proposed  
32 corrective actions and giving effect to the proposed corrective actions, including  
33 projections of statutory operating income, net income, capital or surplus. The  
34 projections for both new and renewal business might include separate projections  
35 for each major line of business and separately identify each significant income,  
36 expense and benefit component;

37 (4) Identify the key assumptions impacting the insurer's projections and  
38 the sensitivity of the projections to the assumptions; and

39 (5) Identify the quality of, and problems associated with, the insurer's  
40 business, including but not limited to its assets, anticipated business growth and  
41 associated surplus strain, extraordinary exposure to risk, mix of business and use

42 of reinsurance in each case, if any.

43 3. The RBC plan shall be submitted:

44 (1) Within forty-five days of the company action level event; or

45 (2) If the insurer challenges an adjusted RBC report pursuant to section  
46 375.1265 within forty-five days after notification to the insurer that the director  
47 has, after a hearing, rejected the insurer's challenge.

48 4. Within sixty days after the submission by an insurer of an RBC plan  
49 to the director, the director shall notify the insurer whether the RBC plan shall  
50 be implemented or is, in the judgment of the director, unsatisfactory. If the  
51 director determines the RBC plan is unsatisfactory, the notification to the insurer  
52 shall set forth the reasons for the determination, and may set forth proposed  
53 revisions which will render the RBC plan satisfactory, in the judgment of the  
54 director. Upon notification from the director, the insurer shall prepare a revised  
55 RBC plan, which may incorporate by reference any revisions proposed by the  
56 director, and shall submit the revised RBC plan to the director:

57 (1) Within forty-five days after the notification from the director; or

58 (2) If the insurer challenges the notification from the director pursuant  
59 to section 375.1265, within forty-five days after a notification to the insurer that  
60 the director has, after a hearing, rejected the insurer's challenge.

61 5. In the event of a notification by the director to an insurer that the  
62 insurer's RBC plan or revised RBC plan is unsatisfactory, the director may at the  
63 director's discretion, subject to the insurer's right to a hearing under section  
64 375.1265, specify in the notification that the notification constitutes a regulatory  
65 action level event.

66 6. Every domestic insurer that files an RBC plan or revised RBC plan  
67 with the director shall file a copy of the RBC plan or revised RBC plan with the  
68 chief insurance regulatory official in any state in which the insurer is authorized  
69 to do business if:

70 (1) Such state has an RBC provision, substantially similar to subsection  
71 1 of section 375.1267; and

72 (2) The chief insurance regulatory official of that state has notified the  
73 insurer of its request for the filing in writing, in which case the insurer shall file  
74 a copy of the RBC plan or revised RBC plan in that state no later than the later  
75 of:

76 (a) Fifteen days after the receipt of notice to file a copy of its RBC plan  
77 or revised RBC plan with the state; or

78 (b) The date on which the RBC plan or revised RBC plan is filed under  
79 subsection 3 or 4 of this section.

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